

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

PAUL B. MITCHEM,)	
)	
Plaintiff,)	
)	
v.)	No. 2:08-CV-238
)	
CITY OF JOHNSON CITY, <i>ET AL.</i> ,)	
)	
Defendants.)	

ADDENDUM MEMORANDUM OPINION AND ORDER

This Order is an addendum to the Memorandum Opinion and Order filed October 27, 2010, deciding the individual defendants' ("Boles" and "Chaffin") motion for summary judgment, [Doc. 19], and the City of Johnson City's ("City") motion for summary judgment, [Doc. 20]. It is to clarify the outcome of the state law battery claim against Officer Chaffin.

In short, Officer Chaffin is entitled to summary judgment regarding the state law battery claim. In Tennessee, battery is "any intentional, unlawful, and harmful, or offensive physical contact by one person with another person." T.P.I. Civil 8.02 (2010); see also *Huffman v. State*, 292 S.W.2d 738 (Tenn. 1956)). In the Complaint the plaintiff alleges that Officers Boles and Chaffin are liable for battery. However, the Complaint fails to allege any contact by Chaffin with the plaintiff.

While it is true that Chaffin admitted in his deposition that he and not Boles was the officer who took the plaintiff's cellular telephone out of plaintiff's hand and placed it in plaintiff's pocket,¹ nowhere in the Complaint or in the arguments made in Response to Chaffin's Motion for Summary Judgment does the plaintiff specifically allege or argue that this is the contact that forms the basis of his battery claim. At all times, the plaintiff has contended that it was the handcuffing that formed the basis of that claim. The facts are undisputed that Boles, not Chaffin, handcuffed the plaintiff. As such, there is no genuine issue of material fact that Chaffin is liable for battery. Thus, Chaffin's motion in that regard is **GRANTED**.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

¹The plaintiff alleged in the Complaint that this was done by Boles. He also testified in his deposition that it was Boles. Then in summary judgment he argued that he was wrong, and it was Chaffin.